

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO
3

4 RODRIGUEZ-RIVERA, et al
5

Plaintiffs
6

v.
7 RIVERA RÍOS, et al
8

Defendants
9

CIVIL NO. 06-1381 (SEC)

10 **OPINION and ORDER**

11 Pending before the Court is Plaintiffs Ana Teresa Rodríguez (“Rodríguez”), on her own behalf,
12 and on behalf of the minors Laura Teresa Malavé Rodríguez, Carla Cristina Malavé Rodríguez, and
13 Gabriela Malavé Rodríguez’s (collectively “Plaintiffs”) Notice of Voluntary Dismissal without
14 prejudice (“Plaintiffs’ notice” or “notice”)(Docket #130), and Defendant Dr. Heidi M. Ayala Cardona’s
15 (“Ayala” or “Defendant”), opposition thereto (Docket # 133). For the reasons explained below,
16 Plaintiffs’ Notice of Voluntary Dismissal without prejudice is **GRANTED**.

17 **Factual and Procedural Background**

18 On April 13, 2006, Plaintiffs filed suit for damages against Ayala, who answered the complaint
19 on July 25, 2006, and later filed an answer to the amended complaint on July 23, 2007. On April 22,
20 2008, Plaintiffs filed a notice of voluntary dismissal. Docket #130 at p.1. Therein, Rodríguez requested
21 that this Court dismiss, without prejudice, her own, as well as her minor children’s claims. *Id.* In
22 support of said request, she asserted that she does not want her children to be exposed to the discovery
23 process and trial. *Id.*

24 Ayala opposes Plaintiffs’ request. Specifically, she argues that Plaintiffs’ claims should be
25 dismissed with prejudice, since otherwise she will be subject to the possibility of additional civil suits
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3 until a year after the dismissal of Rodríguez's claims, and until one year after each of the minor
4 plaintiffs reaches 21 years of age. Docket #133, p.2.

5 **Applicable Law and Analysis**

6 Fed. R. Civ. P. 41 (a)(2) provides that "an action may be dismissed at the plaintiff's request only
7 by court order, on the terms that the court considers proper..." Said rule also states that "[u]nless the
8 order states otherwise, a dismissal under this paragraph (2) is without prejudice." This district has held
9 that "[i]n deciding whether to grant a Rule 41(a)(2) motion, courts typically look to the defendant's
10 effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the
11 plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and the fact
12 that a motion for summary judgment has been filed by the defendant." Camacho-Albert v. Mendez &
13 Co., 589 F. Supp. 2d 141, 144 (D.P.R. 2008) (citing Doe v. Urohealth Sys., 216 F.3d 157, 160 (1st Cir.
14 2000)).

15 When ruling on a Rule 41(a)(2) motion, the First Circuit has held that a court must determine:
16 "(1) whether to allow [the] dismissal; (2) whether the dismissal should be with or without prejudice;
17 and (3) what terms and conditions, if any, should be imposed." Williams v. Peralta Community College
18 Dist., 227 F.R.D. 538, 539 (1st Cir. 2005); see also Burnette v. Godshall, 828 F. Supp. 1439, 1443
19 (N.D.Cal.1993).

20 The above mentioned factors guide the court's inquiry since, "[u]ltimately, this Court has
21 discretion to grant dismissal under the conditions and terms it deems proper." Id.; see also Morel v.
22 Daimler Chrysler AG, 552 F. Supp. 2d 223 (D.P.R. 2007). A court is responsible, under Rule 41(a)(2),
23 for exercising its discretion, and ensuring that dismissal will not unduly prejudice the other party.
24 Urohealth Sys., 216 F.3d at 160. However, "[t]he mere prospect of a second law suit is not 'plain legal
25 prejudice.'" Id.

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3 In their notice, Plaintiffs request that the dismissal of their claims be without prejudice. Ayala
4 opposes said request, arguing that Plaintiffs' notice should be denied, or in the alternative, Plaintiffs'
5 claims should be dismissed with prejudice, in order to avoid subjecting her to the possibility of
6 additional civil suits, until a year from the dismissal of Rodríguez's claims, and until one year after each
7 of the minor plaintiffs reaches 21 years of age.

8 A court should deny a motion for voluntary dismissal under Rule 41(a)(2) if "a defendant can
9 show that it will suffer some plain legal prejudice as a result." Peralta, 227 F.R.D. at 539; Smith v.
10 Lenches, 263 F.3d 972, 975 (9th Cir. 2001). Plain legal prejudice "means prejudice to some legal
11 interest, some legal claim, some legal argument." Smith, 263 F.3d at 976. A party's "uncertainty
12 because a dispute remains unresolved or because the threat of future litigation ... does not result in plain
13 legal prejudice. Also, plain legal prejudice does not result merely because the defendant will be
14 inconvenienced by having to defend himself in another forum or where a plaintiff would gain a tactical
15 advantage by that dismissal." Id.; see also Urohealth Sys., 216 F.3d at 160. Furthermore, "the expense
16 incurred in defending against a lawsuit does not amount to legal prejudice." Peralta, 227 F.R.D. at 539;
17 see also Westlands Water Dist. v. United States, 100 F.3d 94, 97 (9th Cir.1996).

18 As previously mentioned, the threat of future litigation does not constitute "plain legal
19 prejudice," and as such, is insufficient to warrant dismissal with prejudice. Urohealth Sys., 216 F.3d
20 at 160. In order to determine whether to dismiss a claim with or without prejudice, the court should
21 consider: "(1) the defendant's effort and expense in preparing for trial, (2) excessive delay and lack of
22 diligence on the part of the plaintiff in prosecuting the action, [and] (3) insufficient explanation of the
23 need to take a dismissal." Peralta, 227 F.R.D. at 540.

24 Upon reviewing the record, this Court finds that Plaintiffs' suit was filed on April 13, 2006.
25 Docket # 2. Notwithstanding, due to errors in the filing of the initial complaint, an amended complaint
26 was filed on June 5, 2006. Docket #5. The service of summons and answers to the complaint spanned

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3 a long period of time. Finally, this Court issued a Case Management Order on March 13, 2007, setting
4 the deadlines for the case proceedings. Docket # 76. However, a second amended complaint was filed
5 on May 24, 2007 (Docket # 88) and all the answers to said amendment followed. As a result, a second
6 Case Management Order was issued on June 27, 2007, re-setting all the case's deadlines. Docket # 102.
7 This Court notes that, at the date the instant motion was filed, the parties were in the initial stages of
8 discovery (depositions). Notwithstanding, Plaintiffs' notice does not dispose of all plaintiffs in this case.
9 As such, any discovery Defendants may have engaged in is needed in order to continue with the case
10 as to the other plaintiffs. Furthermore, motions for summary judgment have not been filed. Therefore,
11 Plaintiffs' request for dismissal does not unduly prejudice Defendants. Moreover, while there may be
12 some risk that the minors may re-file their case, that is far from a certainty at this point given the fact
13 that the minors have not reached the legal age. More so, when the potential threat of future litigation
14 is not "plain legal prejudice." Urohealth Sys., 216 F.3d at 160. As such, Ayala's claims to that effect
15 lack merit.

16 In support of her arguments, Ayala further contends that if Plaintiffs' claims are dismissed, the
17 instant case will proceed forward without indispensable parties, who may have a right to receive
18 compensation. Docket #133, at 2. The First Circuit has held that "Rule 19(b), which governs
19 indispensable parties, works in two steps." Pujol v. Shearson/American Express, 877 F.2d 132, 134
20 (1st Cir. 1989). First, the district court must decide whether a person fits the definition of those who
21 should "be joined if feasible" under Rule 19(b), that is, if the person is a "necessary" party. Rule 19(a)
22 guides such inquiry. A person is "necessary" and should be joined, when feasible, if (1) in the person's
23 absence complete relief cannot be accorded among those already parties or (2) the person claims an
24 interest relating to the subject of the action and is so situated that the disposition of the action in the
25 person's absence may (i) as a practical matter impair or impede the person's ability to protect that
26 interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double,

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2 multiple, or otherwise inconsistent obligations by reason of the claimed interest. Cintron v. San Juan
 3 Gas, Inc., 79 F. Supp. 2d 16, 18 (D.P.R. 1999)(citing Pujol, 877 F. Supp. 134. If a party is not a
 4 necessary one under Rule 19(a), it cannot be an indispensable one under 19(b), and the analysis stops
 5 there. Rivera-Rojas, 178 F.R.D. at 361 (citing Delgado v. Plaza Las Américas, 139 F.3d 1, 3 n.2 (1st Cir.
 6 1998)). See e.g., Hapag-Lloyd Container Linie, GMBH v. Luis A. Ayala Colón Sucrs., Inc., 209 F.R.D.
 7 285, 287 (D.P.R. 2002).

8 In a wrongful death suit, absentee heirs are not necessary parties under Rule 19(a). Moreover,
 9 even if they were necessary parties, they are not indispensable. Cintron, 79 F. Supp. 2d at 19 (citing
 10 Pujol, 877 F.2d at 135 (citations omitted); see Arias-Rosado v. Gonzalez Tirado, 111 F. Supp.2d 96,
 11 99 (D.P.R.2000)(finding that the nondiverse members of an estate were not indispensable parties as to
 12 the survivorship cause of action.). Specifically, this district has held that there is “no risk that the
 13 interest of the absent heirs would be impaired or not well-protected because any judgment in favor of
 14 one or more participants benefits all other participants in a community of property whereas an adverse
 15 judgment only prejudices the one who filed the judicial action.” Ruiz-Hance v. PRASA, 2009 U.S. Dist
 16 LEXIS 12787 at *16 (D.P.R. 2009)(citing Arias- Rosado, 111 F. Supp. at 99.) Moreover, “[t]he fact
 17 that the succession is not an entity separate and apart from its members does not mean that all of its
 18 participants must always appear together to assert or defend matters affecting the estate. On the
 19 contrary, the Supreme Court of Puerto Rico has consistently held that being a succession a compulsory
 20 community of property and rights, any of the heirs or part thereof may appear at the trial to defend
 21 his/her common rights. If he/she prevails, his/her victory is for the benefit of all the co-owners.” Arias-
 22 Rosado, 111 F. Supp. at 100 (citing Danz v. Suau Ballester, 82 P.R.R. at 595).

23 Based on the foregoing, Ayala’s argument as to Plaintiffs’ alleged indispensability also fail. As
 24 such, and considering that: (1) Ayala failed to show “plain legal prejudice” upon dismissal with
 25 prejudice, (2) the case is at a relatively early stage of the proceedings, (3) the case will proceed as to the
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3 other plaintiffs, and (4) Plaintiffs' reasons for requesting the dismissal of the case, Plaintiffs' request
4 for voluntary dismissal, without prejudice, is **GRANTED**. Finally, since Plaintiffs seek dismissal at an
5 early stage of the discovery process, and because the costs incurred by Ayala in the present suit benefit
6 her defense against the rest of the plaintiffs' claims, no terms and conditions will be imposed on
7 Plaintiffs.

8 **Conclusion**

9 Based on the foregoing, Plaintiffs' notice of voluntary dismissal without prejudice (Docket
10 #130) is **GRANTED**. As such, Rodríguez and her minor children's claims are **DISMISSED without**
11 **prejudice**. Partial Judgment will be entered accordingly.

12 SO ORDERED.

13 In San Juan, Puerto Rico, this 5th day of March, 2009.

14 S/ Salvador E. Casellas
15 SALVADOR E. CASELLAS
16 U.S. Senior District Judge